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Testimony before the House Commerce Committee on
Unemployment Insurance – HB 4449-54
by Tim Hughes
International Union UAW
September 11, 2013

The package of bills before the committee today deals with a variety of unemployment issues, including federal requirements, reversing judicial decisions regarding repayment of benefits and drug tests.

Some of the bills purport to bring Michigan into conformity with federal law, but go well beyond what is required by the federal government.

Federal Requirements

HB 4950 deals with a federal requirement that prohibits states from providing relief from charges to an employer who doesn't provide timely and adequate information relating to a claim or has established a pattern of this behavior. Michigan already has a statute (MCL 421.32 (b) (3) that provides for this. All that is needed to bring us into compliance with federal law is to add in the words "timely or adequate information" and to add "employer's agent" as a possible violator of the law.

HB 4950 adds in language that actually gives at least 4 passes to an employer or employer's agent before they have charges added to their account. This is supposed to establish a pattern of violations referenced under the federal law. But the federal law also gives states the option of not requiring a pattern of non-compliance, instead "denying relief from charges to an employer after the first instance of a failure." That is what Michigan law provides now. The pattern language in HB 4950 actually weakens current law instead of strengthening it. Only nine states have enacted legislation including the pattern language. Michigan should not be the tenth.

Repayment of Benefits

HB 4949 allows the Unemployment Insurance Agency (UIA) to reverse an award of benefits to a laid off worker and to require repayment of those benefits, even though the reversal was not the result of fraud or providing misinformation.

This would allow a scenario where a worker is laid off and receiving benefits that barely provide a poverty level standard of living. Because of a mistake by the UIA, inaccurate or tardy information supplied by an employer or their agent or a reversal by an appellate body, a worker can suddenly find themselves in the position of being without a job, without unemployment benefits that the UIA had previously approved and saddled with an enormous debt that is beyond their ability to pay and likely uncollectable.

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This is simply not fair. Several courts in Michigan have recognized that inequity and have repeatedly ruled that the UIA does not have the authority to seek repayment of benefits in many circumstances.

Section 421.62 of the MES Act allows the agency to waive recovery of these benefits if the payment "was not the fault of the individual". Instead of being cause for a waiver, this should be the plain language of the law. If the reversal of eligibility for benefits was not the fault of the laid off worker, they shouldn't be forced to pay it back.

It's ironic that HB 4950, which allows employers at least 4 "free passes" for not providing timely and adequate information to the UIA without penalty, also provides that unemployed workers have to pay back benefits that were awarded due to employers violating the law.

Unemployed workers have a tough enough time putting food on the table, clothing their children and making their house payment. It's bad enough that they have the rug pulled out from under them with the reversal of a benefit award. To impose a staggering financial burden on them in their time of economic need is cruel and unusual punishment. This policy should be done away with, not expanded.

Drug Testing

HB 4952, which allows the results of a pre-employment drug test to cut off benefits for a laid off worker, has been cleaned up from its predecessor, HB 4240, but problem areas still remain.
The term "drug test" has been better defined by linking the new language to subdivision (m), which requires the test to be done in a non-discriminatory manner with a confirmatory test required for a positive test result. There is also a provision that excludes from the test process controlled substances for which the worker has a prescription from their doctor.

The basic premise of the test requirement remains flawed. It doesn't test impairment on the job. It only detects trace elements of a substance whose effect quite likely wore off long before the individual showed up at work.

It's also not clear from the language of the bill how the information about a drug test result is conveyed to the UIA. These are pre-employment tests of a job applicant. A potential employer is not a party to a UI claim, since they haven't employed the tested individual, yet their pre-employment test may be the reason the individual is cut off of benefits. Both the previous employer and the potential employer will likely be caught up in a large number of appeals, if not lawsuits, regarding test results.

Although the US Department of Labor has not yet definitively ruled on state legislation linking pre-employment drug tests with refusal of suitable work, it is certainly possible that they could find Michigan out of compliance with federal law under the terms of this legislation, a problem as potentially dangerous as failing to act on the other conformity issues in this package.

A final problem is the tie-bars in the package. Some of these bills are required by the federal government...others are not. The tie-bars should be broken so the bills can stand on their own merits.

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